

REMARKS

An Office Action was mailed on February 25, 2005.

The Examiner refers to column 23, lines 21-23 which goes on to talk about the "usage" of the media files and does describe the Rights Reporting Module which again reports the "usage" such as a purchase, download, or any other type of broad usage, namely the request by a user for such usage. Furthermore, the Examiner refers to column 11, lines 55-57 of Wiser relating to reporting royalty payments. However, again the royalty payments is for the request for usage by individuals.

Reviewing to the figures and description of Wiser, it is evident that the use that is being monitored is between the content manager 112 and the various users including Rights Agent 108. See Figures 1A and 1B and the description where Wiser shows how he monitors the request between the user and the manager.

Accordingly, while Wiser does monitor and provide rights payments to authors etc., such is made by monitoring the request for "use". Specifically, the monitoring takes place between the content manager and the user. This is also the same way that Ginter monitors, namely between the content originator and the user.

Thus, the commonality between these references is that they both monitor usage request and such use is between the content provider and the user. It is at that point that the such monitoring takes place.

Although the Examiner pointed to numerous places at Ginter which shows how Ginter monitors, what information he gets, etc., the commonality between these two references is that such monitoring takes place between the content originator and the user. Essentially it is a request monitoring. When the user requests a certain usage it monitors it through the VDE

system. In Wiser, Wiser monitors such request through Wiser's monitoring system. However, it is clear from both of these that the detection takes place upon the request and positions the monitoring between the user that places the request, and the content manager who provides the information from the author.

In the present claimed invention, there are actually three parties involved as shown in the attached. There is the content provider (the author); there is the broadcaster, and there are the ultimate users (the audience or public that is receiving and making use of the content material). Therein, the present invention does not monitor or charge for the actual usage by the user. It does not monitor the request of the ultimate user (the audience). Instead, what is monitored is a "broadcast" to multiple users, but not each usage request.

On the other hand, if one were to consider the broadcaster himself as the user, in that case again the present invention is distinctly different in that it does not monitor the request of such broadcaster for use. Instead, the presently claimed invention monitors his outgoing use rather than his incoming request.

The claims have now been further modified to indicate that the present invention deals with a situation where the monitoring is of the public broadcast of a signal which is being sent out to multiple users in a public audience. Neither Ginter nor Wiser disclose this. Contrary to the Examiner statements, Wiser does not in any place disclose monitoring a public "broadcast" that is being sent out to multiple users in the public audience. Quite the contrary, Wiser is interested in restricting and monitoring the request from each user. This is contrary to the presently claimed invention.

The Examiner relies upon Ginter as the major reference. Ginter is a very broad reference that covers a lot of material. The Examiner identified portions of our claim that are allegedly

found in Ginter. Respectfully, the Examiner was not able to find in Ginter the fact that the information that is gathered is then used to compensate the artist responsible for generating the contents.

Ginter teaches a system where a VDE (Virtual Distribution Environment) information is utilized for numerous purposes. However, all of such teaching in Ginter is based upon monitoring the usage by a user. Such user could be of many types including distributors, etc. However, it is always monitoring such use by monitoring the request for the information by the user. This is shown in the attached figure 1 which follows figure 2A of Ginter.

In order to provide for the compensation aspect, the Examiner relies upon Wiser. In that regard the Examiner cites various portions of Wiser. By way of example, the Examiner cites column 23, lines 18-19 for logging each purchase of the media data file 200. It should be noted that the Examiner cites this section as teaching the operation of the logging module 1014. The Examiner indicates that such module catalogs performance, transmission "and broadcast" of the audio signal. However, nowhere does it ever mention that the logging module catalogs "broadcast". In fact, such word is never even mentioned in Wiser.

The Examiner then goes on to indicate that if such media is purchased it can be "transmitted/broadcasted" and refers to column 11, lines 53-55. Unfortunately, however, Wiser again doesn't mention in this section the "transmission" or "broadcast" of the information. Column 11, lines 53-55 simply indicates that there is Rights Reporting of the "use" for the purposes of royalty payments. Wiser continuously uses the word "used" and monitors when a user requests such "usage". Wiser does not say anything about any information being transmitted or broadcasted by a user.

Furthermore, the claim clearly states that the calculation is based upon the "incidence" of such public broadcast. It is totally independent of the number of users who are actually making use of the content material by listening, downloading, etc. It is only the "broadcast" to the public that is being received as it is being publically broadcast. The present invention does not monitor before a request is made, but after it is already being broadcast in the public domain. Furthermore the calculation is made upon such "broadcast" and the incidence of such broadcast, not the incidence of use by individual users.

It is believed improper for the Examiner to read Wisser to state that it detects "public broadcasting" when the word is never used in Wisser. Also the concept was never presented in Wisser. Absent the present claimed invention there is no teaching in Wisser to publically monitor the "public broadcast" and based upon such monitored "public broadcast" to compensate based upon the incidence of the public broadcast not based upon the "usage" by the individual users, as Wisser requires and as Ginter requires.

In view of the remarks set forth above, this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,



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